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HOUSE BILL NO. 458

Offered January 14, 2026

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A BILL to amend and reenact §§ 58.1-322.02 and 58.1-402 of the Code of Virginia, relating to income tax subtraction; broadband grant fund awards.

Patron—Krizek

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That §§ 58.1-322.02 and 58.1-402 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-322.02. Virginia taxable income; subtractions.**

In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission, or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States, including, but not limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations, of the Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

8. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, (i) for taxable years beginning before January 1, 2023, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the subtractions specified in this clause, and (ii) for taxable years beginning on or after January 1, 2023, not to exceed the amount of income derived from 39 calendar days of such service or \$5,500, whichever amount is less; however, only those persons in the ranks of O6 and below shall be entitled to the subtractions specified in this clause.

9. Amounts received by an individual, not to exceed \$1,000 for taxable years beginning on or before December 31, 2019, and \$5,000 for taxable years beginning on or after January 1, 2020, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

10. The amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

11. Any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Commonwealth Savers Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.)

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HB458

of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.

17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

18. a. Any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

b. For taxable years beginning on and after January 1, 2022, but before January 1, 2023, up to \$10,000 of military benefits; and for taxable years beginning on and after January 1, 2023, but before January 1, 2024, up to \$20,000 of military benefits.

c. For taxable years beginning on and after January 1, 2024, but before January 1, 2025, up to \$30,000 of military benefits; and for taxable years beginning on and after January 1, 2025, up to \$40,000 of military benefits.

d. For purposes of subdivisions b and c, "military benefits" means any (i) military retirement income received for service in the Armed Forces of the United States, (ii) qualified military benefits received pursuant to § 134 of the Internal Revenue Code, (iii) benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States under the Survivor Benefit Plan program established by the U.S. Department of Defense, and (iv) military benefits paid to the surviving spouse of a veteran of the Armed Forces of the United States. The subtraction allowed by subdivision b shall be allowed only for military benefits received by an individual age 55 or older. The subtraction allowed by subdivision c shall be allowed for military benefits received by an individual of any age. No subtraction shall be allowed pursuant to subdivisions b and c if a credit, exemption, subtraction, or deduction is claimed for the same income pursuant to subdivision a or any other provision of Virginia or federal law.

19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from, hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, surviving spouse, or child or stepchild of such victim.

As used in this subdivision:

"Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct aftermath, (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi persecution, or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath.

20. The military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

21. The death benefit payments from an annuity contract that are received by a beneficiary of such contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.

22. Any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. Any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Administration, provided that the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.

Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 36-174. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.

However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330; or (iii) transferred from an account established pursuant to Chapter 12 (§ 36-171 et seq.) of Title 36 into another account established pursuant to such chapter for the benefit of another qualified beneficiary.

For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer savings account," and "qualified beneficiary" mean the same as those terms are defined in § 36-171.

26. For taxable years beginning on and after January 1, 2015, any income for the taxable year attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal Revenue Code.

27. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 27:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i)

indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

28. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by a family member or an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision 24 or 27 or a tax credit under § 58.1-339.4 for the same investment.

b. As used in this subdivision 28:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

29. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

30. For taxable years beginning before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

31. For taxable years beginning on and after January 1, 2022, any compensation for wrongful incarceration awarded pursuant to the procedures established under Article 18.2 (§ 8.01-195.10 et seq.) of Chapter 3 of Title 8.01.

32. a. For taxable years beginning on and after January 1, 2026, any amount of broadband grant funds received by the taxpayer during the taxable year. No subtraction under this subdivision 32 shall be allowed for any income or interest derived from the investment or use of broadband grant funds for purposes unrelated to improving broadband infrastructure and services in the Commonwealth.

b. As used in this subdivision 32, "broadband grant funds" means any monetary award or disbursement provided to the taxpayer by the federal government, the Commonwealth, any agencies or political subdivisions thereof, or any public bodies, for the exclusive purpose of planning, constructing, expanding, or improving upon broadband infrastructure and services in the Commonwealth.

§ 58.1-402. Virginia taxable income.

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C, D, E, G, H, and I, and J.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C, D, E, G, H, and I, and J.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. [Repealed.]

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the intangible expenses and costs if one of the following applies:

(1) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

(2) The related member derives at least one-third of its gross revenues from the licensing of intangible property to parties who are not related members, and the transaction giving rise to the expenses and costs between the corporation and the related member was made at rates and terms comparable to the rates and terms of agreements that the related member has entered into with parties who are not related members for the licensing of intangible property; or

(3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible expenses and costs meet both of the following: (i) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the transaction giving rise to the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

b. A corporation required to add to its federal taxable income intangible expenses and costs pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such taxable year including tax upon any amount of intangible expenses and costs required to be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions between the corporation and a related member or members that resulted in the corporation's taxable income being increased, as required under subdivision a, for such intangible expenses and costs.

If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing evidence, that the transaction or transactions between the corporation and a related member or members resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner shall permit the corporation to file an amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related intangible expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

307 (1) The related member has substantial business operations relating to interest-generating activities, in
308 which the related member pays expenses for at least five full-time employees who maintain, manage, defend
309 or are otherwise responsible for operations or administration relating to the interest-generating activities; and

310 (2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the
311 direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property;
312 and

313 (3) The transaction giving rise to the expenses and costs between the corporation and the related member
314 has a valid business purpose other than the avoidance or reduction of taxation and payments between the
315 parties are made at arm's length rates and terms; and

316 (4) One of the following applies:

317 (i) The corresponding item of income received by the related member is subject to a tax based on or
318 measured by net income or capital imposed by Virginia, another state, or a foreign government that has
319 entered into a comprehensive tax treaty with the United States government;

320 (ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related
321 members provided the payments continue to be made at arm's length rates and terms;

322 (iii) The related member engages in transactions with parties other than related members that generate
323 revenue in excess of \$2 million annually; or

324 (iv) The transaction giving rise to the interest payments between the corporation and a related member
325 was done at arm's length rates and terms and meets any of the following: (a) the related member uses funds
326 that are borrowed from a party other than a related member or that are paid, incurred or passed-through to a
327 person who is not a related member; (b) the debt is part of a regular and systematic funds management or
328 portfolio investment activity conducted by the related member, whereby the funds of two or more related
329 members are aggregated for the purpose of achieving economies of scale, the internal financing of the active
330 business operations of members, or the benefit of centralized management of funds; (c) financing the
331 expansion of the business operations; or (d) restructuring the debt of related members, or the pass-through of
332 acquisition-related indebtedness to related members.

333 b. A corporation required to add to its federal taxable income interest expenses and costs pursuant to
334 subdivision a may petition the Tax Commissioner, after filing the related income tax return for the taxable
335 year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article for such
336 taxable year including tax upon any amount of interest expenses and costs required to be added to federal
337 taxable income pursuant to subdivision a, to consider evidence relating to the transaction or transactions
338 between the corporation and a related member or members that resulted in the corporation's taxable income
339 being increased, as required under subdivision a, for such interest expenses and costs.

340 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and convincing
341 evidence, that the transaction or transactions between the corporation and a related member or members
342 resulting in such increase in taxable income pursuant to subdivision a had a valid business purpose other than
343 the avoidance or reduction of the tax due under this chapter and that the related payments between the parties
344 were made at arm's length rates and terms, the Tax Commissioner shall permit the corporation to file an
345 amended return. For purposes of such amended return, the requirements of subdivision a shall not apply to
346 any transaction for which the Tax Commissioner is satisfied (and has identified) that the transaction had a
347 valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the
348 related payments between the parties were made at arm's length rates and terms. Such amended return shall
349 be filed by the corporation within one year of the written permission granted by the Tax Commissioner and
350 any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest
351 established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the
352 filing of such amended return, any related member of the corporation that subtracted from taxable income
353 amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that
354 portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision.
355 In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied
356 by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax
357 returns for subsequent taxable years to deduct the related interest expenses and costs without making the
358 adjustment under subdivision a.

359 The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any
360 petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the
361 petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon
362 payment of such fee.

363 No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be
364 maintained in any court of this Commonwealth.

365 c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under
366 § 58.1-446.

367 d. For purposes of subdivision B 9:

368 "Arm's-length rates and terms" means that (i) two or more related members enter into a written agreement

for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of the Internal Revenue Code that was in effect at the time of the agreement, and (iv) the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

- (1) It is not regularly traded on an established securities market;
- (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and
- (3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

- (1) Any REIT that is not treated as a Captive REIT;
- (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;
- (3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and
- (4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

- (1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;
- (2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;
- (3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;
- (4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and
- (5) The entity is organized in a country that has a tax treaty with the United States.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of

431 any political subdivision or instrumentality of this Commonwealth.

432 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the
433 Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding year, or
434 the last year in which such corporation has income, under the provisions of the income tax laws of the
435 Commonwealth.

436 4. The amount of any refund or credit for overpayment of income taxes imposed by this Commonwealth
437 or any other taxing jurisdiction.

438 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue Code
439 (foreign dividend gross-up).

440 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted
441 for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

442 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F
443 income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue Code
444 (Global Intangible Low-Taxed Income).

445 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

446 9. [Repealed.]

447 10. The amount of any dividends received from corporations in which the taxpaying corporation owns 50
448 percent or more of the voting stock.

449 11. [Repealed.]

450 12, 13. [Expired.]

451 14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses"
452 or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on
453 account of the provisions of § 280C(c) of the Internal Revenue Code.

454 15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in funds
455 to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1
456 (§ 22.1-175.1 et seq.) of Title 22.1.

457 16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived
458 from the sale or exchange of real property or the sale or exchange of an easement to real property which
459 results in the real property or the easement thereto being devoted to open-space use, as that term is defined in
460 § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance
461 with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed
462 for three years following the year in which the subtraction is taken.

463 17. For taxable years beginning on and after January 1, 2001, any amount included therein with respect to
464 § 58.1-440.1.

465 18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the
466 "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement
467 Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a tobacco marketing
468 quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business
469 having the right to grow tobacco pursuant to such a quota allotment.

470 19, 20. [Repealed.]

471 21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and costs
472 or interest expenses and costs added to the federal taxable income of a corporation pursuant to subdivision B
473 8 or B 9 shall be subtracted from the federal taxable income of the related member that received such amount
474 if such related member is subject to Virginia income tax on the same amount.

475 22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch
476 services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide
477 individuals the training or experience of a launch, without performing an actual launch. To qualify for a
478 deduction under this subdivision, launch services must be performed in Virginia or originate from an airport
479 or spaceport in Virginia.

480 23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply
481 services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial
482 Orbital Transportation Services division of the National Aeronautics and Space Administration or other space
483 flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

484 24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain
485 for federal income tax purposes, or any income taxed as investment services partnership interest income
486 (otherwise known as investment partnership carried interest income) for federal income tax purposes. To
487 qualify for a subtraction under this subdivision, such income must be attributable to an investment in a
488 "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the
489 Secretary of Administration, provided the business has its principal office or facility in the Commonwealth
490 and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a
491 subtraction under this subdivision, the investment must be made between the dates of April 1, 2010, and June
492 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under

§ 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 for the same investment.

b. As used in this subdivision 25:

"Qualified portfolio company" means a company that (i) has its principal place of business in the Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or service other than the management or investment of capital; and (iii) provides equity in the company to the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company" does not include a company that is an individual or sole proprietorship.

"Virginia venture capital account" means an investment fund that has been certified by the Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital account, the operator of the investment fund shall register the investment fund with the Department prior to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one investor who has at least four years of professional experience in venture capital investment or substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to, an undergraduate degree from an accredited college or university in economics, finance, or a similar field of study. The Department may require an investment fund to provide documentation of the investor's training, education, or experience as deemed necessary by the Department to determine substantial equivalency. If the Department determines that the investment fund employs at least one investor with the experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital account at such time as the investment fund actually invests at least 50 percent of the capital committed to its fund in qualified portfolio companies.

26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 or 25 for the same investment.

b. As used in this subdivision 26:

"Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of § 2.2-115.

"Double distressed" means satisfying the criteria applicable to a locality described in subdivision E 3 of § 2.2-115.

"Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C. § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If the Department determines that the trust satisfies the preceding criteria, the Department shall certify the trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed.

27. For taxable years beginning on and after January 1, 2019, any gain recognized from the taking of real property by condemnation proceedings.

28. For taxable years beginning before January 1, 2021, up to \$100,000 of all grant funds received by the taxpayer under the Rebuild Virginia program established by the Governor and administered by the Department of Small Business and Supplier Diversity.

D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

1. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.

2. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

E. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

555 F. Notwithstanding any other provision of law, the income from any disposition of real property which is
556 held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as
557 defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at
558 the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal
559 Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made
560 on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax
561 imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition
562 is in accordance with restrictions or conditions established by the Department, which shall be set forth in
563 guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also
564 address the recapture of such income under certain circumstances. The development of the guidelines shall be
565 exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

566 G. There shall be deducted to the extent included in and not otherwise subtracted from federal taxable
567 income a percentage of the business interest disallowed as a deduction pursuant to § 163(j) of the Internal
568 Revenue Code in the amount of:

- 569 1. 20 percent for taxable years beginning on and after January 1, 2018, but before January 1, 2022;
570 2. 30 percent for taxable years beginning on and after January 1, 2022, but before January 1, 2024; and
571 3. 50 percent for taxable years beginning on and after January 1, 2024.

572 For purposes of subsection G, "business interest" means the same as that term is defined under § 163(j) of
573 the Internal Revenue Code.

574 H. For taxable years beginning before January 1, 2021, there shall be deducted to the extent not otherwise
575 subtracted from federal taxable income up to \$100,000 of the amount that is not deductible when computing
576 federal taxable income solely on account of the portion of subdivision B 10 of § 58.1-301 related to Paycheck
577 Protection Program loans.

578 I. For taxable years beginning on and after January 1, 2026, there shall be deducted the amount paid or
579 cost incurred for installing a qualifying upgrade required to interconnect a triggering project. No deduction
580 shall be allowed under this section for a taxpayer who has claimed a deduction under subdivision 19 of
581 § 58.1-322.03 for the same amount paid or cost incurred to install such qualifying upgrade.

582 For purposes of this subsection, "qualifying upgrade" and "triggering project" have the same meanings as
583 provided for those terms in § 56-596.5.

584 J. *For taxable years beginning on and after January 1, 2026, there shall be deducted to the extent*
585 *included in and not otherwise subtracted from federal taxable income any amount of broadband grant funds*
586 *received by the taxpayer during the taxable year. No deduction shall be allowed for any income or interest*
587 *derived from the investment or use of broadband grant funds for purposes unrelated to improving broadband*
588 *infrastructure and services in the Commonwealth.*

589 *For purposes of this subsection, "broadband grant funds" means any monetary award or disbursement*
590 *provided to the taxpayer by the federal government, the Commonwealth, any agencies or political*
591 *subdivisions thereof, or any public bodies, for the exclusive purpose of planning, constructing, expanding, or*
592 *improving upon broadband infrastructure and services in the Commonwealth.*